case of *Raja Mohktar v. Public Trustee* [1970] 2 MLJ 151 only awarded a sum of RM80,000 for loss of amenities and pain and suffering. It cannot be argued that the present case is any where near the seriousness of injury of that case. I cannot accept the figure of RM100,000 as it is too far out of line with the present trend. But then again the injuries of the plaintiff must have caused considerable pain and suffering and though not as serious as the said case it is still serious. I would therefore award a sum of RM60,000 for the abdominal injuries. As regards the head of the leg injury I would accept the case of *Wong Yee Pen v. Sharifudin Bin Yusof* [1989] 2 CLJ 1098 cited by plaintiff's Counsel as providing a valuable guide for the amount to be awarded and I would therefore award the sum of RM30,000. The said sum of RM90,000 (RM60,000 + RM30,000) shall carry interest at 8% per annum from 13 August 1983 (date of service of writ) to 21 September 1992 (date of judgment) (9 years and 40 days) of RM65,589.04.

The Award

I would therefore allow judgment for the plaintiffs in the following sums:

(a) Special damage	RM	574.00
(i) Interest	RM	277.42
(b) General Damages:		
(i) Abdominal injuries	RM	60,000.00
(ii) Leg injuries	RM	30,000.00
(iii) Interest	RM	65,589.04
Total	RM	156,440.46

The sum of RM90,574 (RM574 + RM60,000 + RM30,000) shall carry further interest at 8% per annum from the date of judgment until payment. The plaintiff shall also recover costs from the defendant to be taxed.

IN THE MATTER OF RE K. & M. (JOINT PETITIONERS)

HIGH COURT, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[JOINT DIVORCE PETITION FOR NULLITY NO. 33-260-91]
3 JULY 1992

FAMILY LAW: Petition for nullity - Non-consummation - Principles applicable - Proof required - Law Reform (Marriage & Divorce) Act 1975.

The petitioners, both of the Hindu faith, were married in March 1989 at the Registry of Marriages in Petaling Jaya after due compliance with the provisions of ss. 22(3), (6) and 23 of the Law Reform (Marriage & Divorce) Act 1975. The petitioners asserted that at the time of the civil marriage it was their intention not to cohabit until after a further ceremony had taken place according to Hindu religious rites.

The ceremony never took place and a joint petition was presented in October 1991 seeking the annulment of the marriage on the ground that it was never consummated.

Held:

[**1**] The law relating to marriages was not intended to provide for conditional marriages which are a nullity by way of being void *ab initio* or being voidable because there was in reality no consent to consummation when the marriage was solemnised.

[**2**] A person who says he or she has come to the Registrar on his own free will for the purpose of becoming man and wife, can only do so if there are no reservations.

[**3**] Swearing a statutory declaration knowing that it is not factually correct or making a false statement to the Registrar could come within s. 199 of the Penal Code.

[**4**] The Court may require more than the parties' bare assertion that consummation had not taken place. A reluctance to provide medical evidence may lead to adverse inferences.

[Leave to withdraw petition granted. Order accordingly]

Legislation referred to:
Law Reform (Marriage & Divorce) Act 1975, ss. 22(3), 22(6) & 23
Penal Code, s. 199

For the petitioners - Santha ; M/s. Seelan & Santha

JUDGMENT

Mahadev Shankar J:

This judgment may afford some guidance to parties intending to present petitions for nullity on the ground that the marriage has not been consummated.

In March 1989 these petitioners were married in the Registry of Marriage at Petaling Jaya.

They were both of the Hindu faith. It has been asserted that at the time of the civil marriage it was the intention of the parties that cohabitation was only to commence after a further ceremony had taken place according to Hindu religious rites.

That ceremony did not take place. A joint petition was presented in October 1991 that the marriage be annulled because the marriage was never consummated.

By s. 22(3) of the Law Reform (Marriage & Divorce) Act 1975 (the Act) the marriage may not be solemnised by the Registrar unless he is first satisfied by statutory declaration *inter alia* that there is no lawful impediment to the marriage. By s. 22(6) no marriage shall be solemnised unless the Registrar is satisfied that both parties freely consent to the marriage.

By s. 23 of the Act the Registrar must ask the parties if they have come to him of their own free will for the purpose of becoming man and wife.

Upon their answering in the affirmative he shall proceed thus:

> Take notice then that, by this solemnisation of your marriage before these witnesses here present according to law, you consent to be legally married for life to each other, and that this marriage cannot be dissolved during your lifetime except by a valid judgment of the Court and if either of you shall, during the lifetime of the other, contract another marriage, howsoever and wheresoever solemnised, while this marriage subsists, you will thereby be committing an offence against the law.

Where either party to a civil marriage under this Act knows full well that he or she does not intend the relationship to be what it is provided to be by law unless some further ceremony is to take place it immediately becomes open to inquiry whether a deception is being practised upon the Registrar. Swearing a statutory declaration knowing that it is not factually correct can have serious legal consequences. Making a false statement to the Registrar could come within s. 199 of the Penal Code. A person who says he or she has come to the Registrar of his or her own free will for the purpose of becoming man and wife, can only do so if there are no reservations. This law was not intended to provid for conditional marriages which are a nullity by way of being void *ab initio* or being voidable because there was in reality no consent to consummation when the marriage was solemnised.

A second problem is one of credibility. If the parties were not totally honest with the Registrar, can they be believed when they come to Court and blandly assert that the marriage was never consummated? In circumstances such as these the parties may do well to remember that a Court may require more than their bare assertion that consummation has not taken place. In the case of the wife medical evidence may well be readily available. A reluctance to provide it may also lead to other adverse inferences.

In short solicitors who have the conduct of such cases would do well to advise their clients that the Civil Marriage Ceremony is a serious business which should not be undertaken if either party has any reservations about the matter.

The provisions in the Act relating to Divorce are quite humane and practical, and that may well be the appropriate route to take in such cases.

After they were appraised of the problems here these parties preferred to withdraw their petition for nullity and file a Divorce petition. Accordingly I do not need to make any other order.